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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,237	07/31/2003	Robert J. Lewis	780139.91611	1738
26710	7590	10/13/2005	EXAMINER	
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497			ROSENBERG, LAURA B	
			ART UNIT	PAPER NUMBER
			3616	

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/631,237	LEWIS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Laura B. Rosenberg	3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 6-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-22 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

*WLC*

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### **DETAILED ACTION**

1. This office action is in response to the amendment filed 28 July 2005, in which claims 1, 4, 10, 15-18, and 20-22 were amended and claims 5 and 23 were cancelled.

#### ***Claim Objections***

2. Claim 15 is objected to because of the following informalities: the applicant should claim either "a fork" or "forks", and the term "fork" or "forks" should be used consistently throughout the claim. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 10-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regards to claim 10, lines 2-3, it is unclear how the first direction can be opposite the first direction.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4, 6, 9, 10, and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Haack et al. (6,564,906). Haack et al. disclose a material handling vehicle (including #1, 101, 201, 301), or lift truck, comprising:

- Operator compartment (including #11, 111, 211, 311)
- First operator control handle (#31, 131, 231, or control handle of #325') mounted at a first position (first end) and able to operate in a first operator orientation (facing fore, in direction of forks)
- Second operator control handle (#31, 131, 231, or 331; column 6, lines 54-60) mounted at a second position (second end) and able to operate in a second operator orientation opposite the first operator orientation (facing aft, in direction opposite forks)
- Floor provided in the compartment (best seen in overhead view in figures 2-6) and a deadman switch (including #47, 49, 147, 149, 247, 249, 347, or 349) mounted to the floor in a position able to be accessed by an operator operating either the first control handle (for example, deadman switch #49, 149, 249, or 349) or a the second control handle (for example, deadman switch #47, 147, 247, or 347)

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- Traction system (including contents under cover #7, wheels #3-5, and associated connections) controlled by operator control handles to drive the vehicle in a selected direction
- Operator can control the traction system while in either operator orientation (best seen in figures 2-5)
- First operator control handle is multi-functional (column 5, lines 27-29)
- Second operator control handle is substantially horizontal (best seen in figures 2-5)
- Second operator control handle is a "twist grip control"
- First control handle for operator facing first direction (toward forks) and rotational in the first direction to select motion in the first direction (current handle is rotational, and joystick configuration would also be rotational)
- Second control handle for operator facing second direction (away from forks) and rotational in the second direction to select motion in the second direction (current handle is rotational, and joystick configuration would also be rotational)
- Control handles are able to rotate to provide a control signal indicative of motion in a direction opposite the direction the operator is facing (able to move in reverse)
- Forks (#13, 113, 213, 313)
- Enclosure (including #15, 115, 215, 315)
- Steering mechanism (including #29, 129, 329, steering mechanism of #223) controlled by the operator to select a direction of motion and mounted for access during fore and aft stance operations

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3, 4, 6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollish, Jr. (6,679,349) in view of Burgess (4,212,250). Pollish, Jr. discloses a material handling vehicle (#10), or lift truck, comprising:

- Operator compartment (best seen in figure 1)
- First operator control handle (including #19, 20) mounted at a first position (first end) and able to operate in a first operator orientation (facing fore, to the right in figure 1)
- Second operator control handle (including #17, 18) mounted at a second position (second end) and able to operate in a second operator orientation (facing aft, to the left in figure 1)
- Floor provided in the compartment (best seen in figures 1, 2)
- Traction system (conventional drive assembly) controlled by the operator control handles to drive the vehicle in a selected direction
- Operator can control the traction system while in either operator orientation
- Second operator control handle is a "twist grip control"
- Second operator control handle is substantially horizontal (best seen in figure 2)
- Fork (not labeled, but best seen in figure 1)
- Enclosure (including #11)

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- Steering mechanism (including #13, 14, and steering wheels) controlled by the operator to select a direction of motion and mounted for access during fore and aft stance operations

Pollish, Jr. does not disclose a deadman switch mounted to the floor.

Burgess teaches a material handling vehicle comprising first and second operator control handles (including #11, 12, 24) at first and second ends of the vehicle, a traction system (including #3, 4), and a deadman switch (#25, 26) mounted to the floor (best seen in figure 1) in a position that is able to be accessed by an operator operating either the first control handle or the second control handle (one deadman switch at each end). It would have been obvious to one skilled in the art at the time that the invention was made to modify the vehicle of Pollish, Jr. such that it comprised a deadman switch as claimed in view of the teachings of Burgess so as to prevent movement of the vehicle when an operator is not in proper position in the vehicle (Burgess: column 4).

9. Claims 1, 2, 4, 6, 7, 9-11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale (1,672,212) further in view of Burgess (4,212,250). Hale discloses a vehicle comprising:

- Operator compartment (best seen in figure 3)
- First operator control handle (including #11) mounted at a first position (first end) and able to operate in a first operator orientation (facing fore, to the right in figure 1)

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- Second operator control handle (including #11) mounted at a second position (second end) and able to operate in a second operator orientation (facing aft, to the left in figure 1)
- Floor provided in the compartment (best seen in figures 2, 3)
- Traction system (including #6, 7, 7', 8, 8', 9, 9') controlled by the operator control handles to drive the vehicle in a selected direction
- Operator can control the traction system while in either operator orientation
- First operator control handle is a "multi-function control handle" (multiple gears)
- Second operator control handle is a "twist grip control"
- Mechanical linkage (including #7, 7', 8, 8') linking the control handles (best seen in figures 1, 3)
- First control handle for operator facing first direction (for example, to the right) and rotational in the first direction (rotational about base of #11) to select motion in the first direction
- Second control handle for operator facing second direction (for example, to the left) and rotational in the second direction (rotational about base of #11) to select motion in the second direction
- Control handles (#11) rotational around a substantially horizontal axis (axis through base of #11)

The phrase "material handling vehicle" leads to the intended use of the vehicle and does not serve to distinguish the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.



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Hale does not disclose a deadman switch mounted to the floor.

Burgess teaches a material handling vehicle comprising first and second operator control handles (including #11, 12, 24) at first and second ends of the vehicle, a traction system (including #3, 4), and a deadman switch (#25, 26) mounted to the floor (best seen in figure 1) in a position that is able to be accessed by an operator operating either the first control handle or the second control handle (one deadman switch at each end). It would have been obvious to one skilled in the art at the time that the invention was made to modify the vehicle of Hale such that it comprised a deadman switch as claimed in view of the teachings of Burgess so as to prevent movement of the vehicle when an operator is not in proper position in the vehicle (Burgess: column 4).

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haack et al. (6,564,906) in view of Larsen et al. (4,919,233). Haack et al. disclose the first operator control handle being multi-functional (column 5, lines 27-29) and including a portion that is substantially horizontal (best seen in figures 2-5). Haack et al. do not disclose a horizontal portion being rotated to select a direction and speed of travel of the vehicle. Larsen et al. teach a material handling vehicle comprising an operator control handle (including #68) that has a portion that is substantially horizontal (best seen in figure 2) and is rotated to select the direction and speed of travel of the vehicle (column 3, lines 58-60). It would have been obvious to one skilled in the art at the time that the invention was made to modify the control handle of Haack et al. such that it comprised a horizontal portion that is rotated to select the direction and speed of travel as claimed in

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view of the teachings of Larsen et al. so as to provide for quicker and more accurate control over the speed of travel of the vehicle.

***Allowable Subject Matter***

11. Claims 15-22 are allowed.

12. The following is a statement of reasons for the indication of allowable subject matter: The allowable subject matter in claim 15 is the steering mechanism being mounted to be accessible to an operator facing the fork and controlling the first operator control adjacent the fork, and accessible to an operator facing the end opposite the fork and controlling the second operator control near an end of the compartment opposite the fork, in combination with other features of claim 15.

***Response to Arguments***

13. Applicant's arguments filed 28 July 2005 have been fully considered but they are not persuasive.

In regards to claim 1, the claim requires that there be a deadman switch mounted to the floor and able to be accessed by an operator operating either the first or second control handle. The key point to be made here is that this portion of the claim is written in the alternative, so that the deadman switch need only be able to be accessed by an operator operating one of the control handles. If the applicant intended for the operator to be able to access a single deadman switch from both control locations, then this should have been claimed. Also, the examiner would like to the point out that the Frees

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reference (4,287,966) teaches the use of a single deadman switch that is accessible in both the fore and aft locations of a material handling vehicle.

In regards to claim 10, the claim requires that there be a steering mechanism mounted for access by an operator facing either the first or second direction. The key point to be made here is that this portion of the claim is written in the alternative, so that the steering mechanism need only be able to be accessed by an operator facing one of the directions. If the applicant intended for the operator to be able to access a single steering mechanism from both directions, then this should have been claimed.

### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura B. Rosenberg whose telephone number is (571) 272-6674. The examiner can normally be reached on Monday-Friday 7:00am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Laura B Rosenberg  
Patent Examiner  
Art Unit 3616

LBR

  
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